CF1002

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

WRIT PETITION (C) No. 7190 /2006

PETITIONER — M/s.Payal Travels, through Partner Swaroop Jain, Son of Ghisulal Jain, Aged about 45 years, R/o. Sadar Bazar, Durg (C.G.).

P.R. No. 66557/06
Presented by Adv. A. Sanjay Tiwari
dated 22-11-06

VERSUS

RESPONDENTS

1. State Transport Appellate Tribunal, Raipur (C.G.).
2. Regional Transport Authority Chhattisgarh at Raipur.
3. Secretary, R.T.A. Jagdalpur (C.G.).
4. Dubey Travels, Through Partner Brajesh Dubey, Bus Stand, Raipur (C.G.)

OATH COMMISSIONER ARPANA MALVIYA Code No. 73/06 22/11/06 District Chhattisgarh

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(41) (36)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO. 7190 OF 2006

PETITIONER : M/s. Payal Travels

VERSUS

RESPONDENTS : State Transport Appellate Tribunal, Raipur and others

WRIT PETITION (C) NO. 7191 OF 2006

PETITIONER : M/s. Manish Travels

VERSUS

RESPONDENTS : State Transport Appellate Tribunal, Raipur and others

Order post for 31-1-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

WRIT PETITION (C) NO. 7190 OF 2006

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VERSUS

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PETITIONER : M/s. Manish Travels

VERSUS

RESPONDENTS : State Transport Appellate Tribunal, Raipur and others

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PRESENT: Shri B.K. Rawat, counsel for the petitioner.
Shri J.D. Bajpai, counsel for the respondent No. 4/Caveater.

O R D E R

Dhirendra Mishra, J.

Since common question of law is involved in both these petitions, they are being decided by this common order. However, for the purpose of disposing of these petitions, the facts of W.P.(C) No. 7190/2006 are being dealt with.

This petition is directed against the order of Annexure P-5 dated 20-11-2006 passed in Revision No. 165/2006 by respondent No. 1/ State Transport Appellate Tribunal, Raipur (for short, hereinafter referred to as "STAT"),

whereby regular stage carriage permit granted in favour of the petitioner by Regional Transport Authority, Chhattisgarh vide order dated 25-2-2005 has been set aside.

2. Briefly stated the facts of the case are that the petitioner applied for grant of stage carriage permit in the route Durg to Bailadila before Regional Transport Authority. It was stated by the petitioner that a regular permit No. 133/2004 has been issued in his favour for the same route, however since there is a collusion in the timings, therefore, a fresh regular permit be issued with partial modification. The respondent No. 4 objected to the issuance of regular permit on the ground that he has also applied for permit for the same timings. However his objection was rejected on the ground that his application for issuance of regular permit has already been rejected and, therefore, his objection has become infructuous and accordingly regular permit as prayed by the petitioner was granted vide Annexure P-1 with certain conditions. Apart from other conditions, a condition was imposed that the petitioner shall obtain permit within 30 days from the date of receipt of notice of the order granting permit failing which the permit shall automatically stand cancelled and further that the petitioner shall surrender the regular

permit No. 133/2004, then only he shall be eligible to get a fresh regular permit. Being aggrieved by the above order, the respondent No. 4 preferred a revision under Section 90 of the Motor Vehicles Act, against the order of Annexure P-1. The STAT allowed the revision and cancelled the regular permit No. 197/2005 issued in favour of the petitioner.

3. Learned counsel for the petitioner submits that the revision preferred by the respondent No. 4 before the STAT was incompetent as the respondent No. 4 had no *locus standi* to file the revision as he was not an aggrieved person. Reliance is placed on a decision in the matter of ***Mithilesh Garg, etc. –v- Union of India and others etc.*** reported in ***AIR 1992 SC 443***. He further submits that STAT has misconstrued the conditions No. 4 and 5 imposed by the order of the Regional Transport Authority dated 25-2-2005 as new permit No. 197/2005 issued to the petitioner was effective from 1-3-2006, the date from which the old permit No. 133/2004 was already surrendered.

4. On the other hand, learned counsel for the respondent No. 4 submits that the application for permit preferred by the respondent No. 4 was for the same timings and the same route, therefore, the Regional Transport Authority ought to have decided both the applications together. Reliance is placed on the decision in the matter of

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Yakub Sarif –v- State Transport Appellate Tribunal and others reported in ***AIR 2006 CHH. 46***. He further submits that from perusal of the impugned order, it is clear that the Regional Transport Authority issued permit to the petitioner on 25-2-2005. The petitioner was plying a bus on the same route vide permit No. 133/2004, however by the fresh application his purpose was change of timings, but instead of filing an application for change of timings in the already effective regular permit under Section 72(2)(xxii) of the Motor Vehicles Act, application for new regular permit was filed, which is not permitted under the scheme. Even otherwise, the conditions imposed in the permit have been violated and permit was issued on 3-2-2006 without surrendering the old permit as the old permit No. 133/2004 was surrendered only on 28-2-2006. Though there is no evidence available on record, in fact as to when permit No. 133/2004 was surrendered, on the other hand, permit No. 133/2004 was cancelled on 18-5-2005 by the STAT.

5. I have heard learned counsel for the parties. I have perused the impugned order.

6. The first question for consideration is whether the revision at the instance of respondent No. 4 was competent before the STAT or not. In the matter of ***Mithilesh Garg***

(supra), challenge was made to liberalization of the private sector operations in the road transport field under Section 80 and other provisions of Motor Vehicles Act, 1988 by the existing operators on the ground that they have been adversely affected in exercise of their rights under Articles 14 and 19 of the Constitution of India. Hon'ble The Supreme Court comparing the provisions of the Act and old Act, observed that the Parliament in its wisdom as completely effaced the features of the old Act contained in Chapter IV which made a provision against applications for grant of permits and it was further provided that representations made were to be decided in a quasi judicial manner keeping in view the criteria laid down in Section 47(1) and also keeping in view the limit fixed under Section 47(3) of the old Act. An application for grant of permit beyond the limited number fixed under Section 47(3) was to be rejected summarily. However, considering the convenience and benefit of traveling public and further considering the public interest at large, liberalization in the procedure for grant of permit under the Act has been upheld where intending operators can get permit for asking irrespective of the number of operators already in the filed.

7. However, in the present case, the grievance of the respondent No. 4 before the STAT was that he had also

applied for permit for the same route and for the same timing. The petitioner had already a regular permit No. 133/2004 in his favour and by the application for new permit, he in fact had applied for change of timing which was not permissible under the law. In any case, the RTA ought to have considered both the applications together but the application of the petitioner was allowed and the objection of the respondent No. 4 was brushed aside with an observation that his application for permit has been rejected, and therefore the objection is of no consequence.

8. It is true that after coming into force of the new Act, granting of permit for stage carriage permit has been liberalized and it is not open to the existing operators to object against grant of permit to any applicant and to that extent, the existing operators do not have any *locus standi* to either prefer objection or to file revision. However, in the instant case, the objection was not from any existing operator but the objection was from the respondent No. 4 who had applied for issuance of regular permit for the same timings and in fact the petitioner was existing operator having a permit No. 133/2004 for the same route possibly for a different timing. In the matter of **Yakub** (supra), this Court had an occasion to deal with an identical situation where two applicants made applications before the Road

Transport Authority for grant of permit on the same route, however, the application of one applicant was allowed and it was stated by the STAT that the application for other applicant was taken for consideration and after consideration his application was rejected. In these circumstances, this Court held that at least both the applications should have been clubbed together and thereafter it ought to have been decided by a common order. Therefore, this Court is of the considered opinion that the revision preferred before the STAT was maintainable and on this ground, the impugned order cannot be faulted.

9. From careful scrutiny of the impugned order, it is observed that the regular permit was granted to the petitioner on 25-2-2005. A regular permit No. 133/2005 for the same route was already issued to the petitioner and he was plying his bus in the said route on the strength of the earlier permit. The order was passed on 25-2-2005 with a condition that he shall obtain the permit within 30 days from the date of receipt of the order failing which the permit shall stand automatically cancelled and the new permit shall be issued only after permit No. 133/2004 is surrendered by the petitioner. STAT has observed that the permit was issued to the petitioner on 3-2-2006 i.e. almost

one year after the order dated 25-2-2005 was passed. There is no evidence as to when the order dated 25-2-2005 was served upon the petitioner. Intimation of cancellation of regular permit No. 133/2004 was given on 28-2-2006 i.e. after issuance of new permit which is contrary to the condition of the order dated 25-2-2005. It has also been observed that the petitioner has not been able to file any proof as to when and where he surrendered the permit No. 133/2004. Thus considering the reasons assigned by the STAT, this Court is of the considered opinion that there is no illegality or infirmity committed by the Court below which calls for any interference under Article 227 of the Constitution of India.

10. The petitions being devoid of substance are dismissed. However no order as to costs.

Sd/-
Dhirendra Mishra
Judge